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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY and GREYHOUND LINES, INC.,
Petitioners,

vs.

KATHERINE TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN G. FISHER, BARBARA MCGALLIAND, DORIS ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir of SUE WALTON, and DONALD WOOD,
Respondents.

MOTION FOR LEAVE TO FILE RESPONSE TO BRIEF AMICI CURIAE
and
PETITIONERS' REPLY BRIEF TO BRIEF AMICI CURIAE

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PAGE

Subject Index

	Page
Motion for Leave to File Response to Brief Amici Curiae	1
Petitioners' Reply Brief to Brief Amici Curiae	3
Introduction	3
Argument	5
Allowance of the interpleader relief would not cause an unwarranted extension of federal jurisdiction, nor would it give any tort-feasor or any insurance company any unwarranted advantage in choosing a forum	5
Forum shopping	6
Allowance of interpleader relief would not produce any change in the pattern of liability insurance coverage	16
The Interpleader Act should be broadly and liberally interpreted and applied and should not be restricted or confined by narrow or technical limitations	18
Conclusion	22

Table of Authorities Cited

Cases	Pages
Babcock v. Jackson, 12 N.Y. 2d 473, 191 N.E. 2d 279 (1963)	9
Bowles v. Barde Steele Company, 177 Ore. 421, 164 P. 2d 692 (1945)	7
General Fire and Casualty Co. v. Greyhound Lines, Inc., et al. (Civil No. 66-205 pending in United States Court for District of Oregon)	17
Gordon v. Reynolds, 187 Cal. App. 2d 472 (1960)	8
Gore v. Northeast Airlines, Inc., 222 F.Supp. 50 (S.D. N.Y. 1963)	10
Griffin v. McCoach, 313 U.S. 498 (1941)	6, 7, 8
Loranger v. Nadeau, 215 Cal. 362, 10 P. 2d 63 (1932)	8
Maag v. Voykovich, 46 Wash. 2d 302, 280 P. 2d 680 (1955)	8
Mountain v. Price, 20 Wash. 2d 129, 146 P. 2d 327 (1944)	8
Nadeau v. Power Plant Engineering Co., 216 Ore. 12, 337 P. 2d 313 (1959)	7

Pages

Pearson v. Northeast Airlines, Inc., 309 F. 2d 553 (2 Cir., 1962), Cert. den. 372 U.S. 912 10

Richardson v. Pac. Power & Light, 11 Wash. 2d 288, 118 P. 2d 985 (1941) 8

Rodgers v. Northwest Airlines, Inc., 202 F. Supp. 309 (S.D. N.Y. 1962) 14

Tollett v. Phoenix Assurance Co., 147 F. Supp. 597 (W.D. Ark. 1956) 18

Tramontona v. S. A. Empresa De Viacao Aerea Rio Grendense, 350 F. 2d 468 (DCC 1965) 9

Travelers Indemnity Co. v. Greyhound Lines, Inc., et al., 260 F. Supp. 530 Adv. Sh. (W.D. La. 1966) 17, 21

Underwriters at Lloyds v. Nichols, 363 F. 2d 357 (8 Cir., 1966) 19

Victor v. Sperry, 163 Cal. App. 2d 518 (1958) 8

Williamson v. Weyerhaeuser Timber Co., 221 F. 2d 5 (9th Cir. 1955) 7

Codes

California Code of Civil Procedure:
Section 340 21
Section 875 21

Rules

Rules of Civil Procedure, Rule 42 12

Statutes

Federal Interpleader Act, Ch. 646, 62 Stat. 931, 28 U.S.C., Section 1335 3

Oregon Revised Statutes:
Section 12.110 21
Section 30.020 7

28 U.S.C., Section 1404 14

Washington Revised Code, Section 4.16.080 21

Texts

Restatement (Second), Conflict of Laws, Section 379 9

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Respondents.

MOTION FOR LEAVE TO FILE RESPONSE TO BRIEF AMICI CURIAE

Greyhound Lines, Inc. moves the Court for leave to file a brief in response to the brief amici curiae.

In support of its motion, applicant represents to the Court as follows:

1. A petition for certiorari was granted herein on October 10, 1966. The petitioners' brief was filed with the Clerk of this Court on December 9, 1966. Amici

curiae served upon petitioners their motion for leave to file brief amici curiae and tendered said brief on January 20, 1967. On February 1, 1967, petitioners received advice from the Clerk of the Court advising that oral argument would be held the week of February 13, 1967. On February 10, 1967, petitioners filed their reply brief. On February 13, 1967, the Court granted the motion of amici curiae, whose brief was thereupon filed.

2. The brief amici curiae is devoted almost exclusively to matters not heretofore urged in either the District Court or Court of Appeals and which were not urged by respondents in their brief in this Court.

3. The contentions of amici curiae could not be met in argument on summary calendar. Absent leave to respond to these contentions, as here requested, petitioners will be wholly deprived of an opportunity to respond to the arguments of amici curiae as set forth in their brief.

4. The brief in response to the brief of amici curiae will contain no matter or argument found in any brief heretofore filed in this proceeding nor covered by oral argument.

Dated, San Francisco, California,
March 1, 1967.

Respectfully submitted,
JOHN GORDON GEARIN,
J. D. BURDICK,
Counsel for Petitioner
Greyhound Lines, Inc.

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OF THE
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Respondents.

PETITIONERS' REPLY BRIEF TO BRIEF AMICI CURIAE

INTRODUCTION

Amici curiae in their brief tacitly admit that petitioner State Farm Fire and Casualty Company is plainly entitled to the relief provided by the Federal Interpleader Act (c. 646, 62 Stat 931, 28 USC § 1335). Having so tacitly admitted, they suggest a variety of supposed reasons (none of which have heretofore

in these proceedings been raised) as to why the exercise by the District Court of such interpleader jurisdiction would be unwise in this particular case or in the alternative why, if the District Court is to be permitted to exercise its jurisdiction, a variety of inhibitions should be imposed (apparently by order of this Court) upon the District Court in its exercise of that jurisdiction.

Before dealing with these contentions in detail, there are certain introductory matters which should be discussed.

The insinuation[1] to the effect that State Farm and Greyhound are parties to some sinister scheme or plot and seek by this proceeding to somehow deprive the claimants other than Greyhound of their rights to a fair trial is wholly improper. Greyhound was properly joined as a defendant in these proceedings by State Farm because it has, along with the other claimants, substantial claims against State Farm's assured and the fund on deposit with the District Court.[2] The fact that Greyhound, after having been

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[1]At page 8 of their brief, amici curiae state as follows:

"However, for the reasons stated below, we urge that any reversal should be in one of two forms:

(2) It should take account of what the insurance companies and common carriers are *really* trying to accomplish in this case, and indicate some guide lines or limitations for this truly major development in multiple-injury litigation and federal jurisdiction." (Emphasis in the original.)

[2]Greyhound's driver was severely injured in the accident and Greyhound has paid to him in excess of $15,000.00, under the Workmen's Compensation laws of California, which sum it is entitled to recover from Clark and the fund. In addition, Greyhound's bus valued in excess of $30,000.00, was totally destroyed.

properly brought into the action as a defendant-claimant, has decided that the interpleader procedure would be beneficial to it, and to all parties, including all claimants and therefore now supports the action and appears before this Honorable Court in an effort to convince this Court that the exercise of interpleader jurisdiction here will be beneficial to State Farm, all of the claimants, Greyhound, the courts, and the public in no wise alters the fact that these proceedings were commenced independently by State Farm on its own behalf.

ARGUMENT

ALLOWANCE OF THE INTERPLEADER RELIEF WOULD NOT CAUSE AN UNWARRANTED EXTENSION OF FEDERAL JURISDICTION, NOR WOULD IT GIVE ANY TORT-FEASOR OR ANY INSURANCE COMPANY ANY UNWARRANTED ADVANTAGE IN CHOOSING A FORUM

At pages 9 through 16 of their brief, amici curiae suggest that allowance of interpleader in the instant case will: (1) permit State Farm, on behalf of itself and its assured, to shop for a forum which imposes a maximum limitation on recovery for wrongful death; (2) prevent interested states from imposing their own policies upon the question of liability and will discourage settlement; (3) may deprive the injured parties of a jury trial; (4) result in inconvenience to the plaintiffs who are not resident in Oregon because they will have to come to Oregon to try their cases. We will hereafter seek to answer each of these contentions in order.

FORUM SHOPPING

More than two-thirds of all the personal injury and death claims arising out of this accident are already subject to federal jurisdiction by reason of diversity of citizenship. If not filed in federal courts by the injured parties or heirs of decedents, they could be removed to federal courts. Thus there cannot be any serious contention that recognition of the right of interpleader in this case will permit forum shopping as between the state and federal jurisdictions.

The suggestion that jurisdiction should be denied in this action because of potential conflict of laws problems (the exact nature of which is impossible to determine since the given law of states changes from day to day) entirely overlooks the history and purpose of the Federal Interpleader Act. Conflict of laws problems are not unique to unliquidated tort claims. Conflict questions arise whenever citizens and residents of different states litigate in non-resident states, regardless of the type of claim. Indeed the leading case on choice of law questions in interpleader actions, *Griffin v. McCoach,* 313 U.S. 498 (1941) is a non-tort action involving the right of an estate to share in the proceeds of an insurance policy.

Knowing this, Congress nevertheless explicitly provided that a party could bring an action in interpleader or in the nature of interpleader in the district wherever a party of diverse citizenship resided and added a provision for extraterritorial service of process so that all interested parties could be joined.

The argument of amici curiae is, therefore, nothing more than an attack upon the passage of the Interpleader Act rather than a reason for denying jurisdiction in this particular case. Congress answered this argument in 1917.

But if the Court wishes to consider hypothetical conflict of laws questions in a jurisdictional determination, it is readily apparent that the horrors posed by amici curiae are products of fantasy rather than judicious scrutiny.

Amici curiae suggest that if interpleader is allowed in Oregon, the wrongful death limitation imposed by the Oregon statute (Ore. Rev. Stat. 30.020) will be applied to cases where the decedent was a resident of some state which does not impose such limitation. The suggestion is entirely misplaced. *Griffin v. McCoach,* supra, 313 U.S. 498 (1941), established the rule that in an interpleader action the federal district court will apply the choice of law rule of the state in which it sits. Thus the District Court in this case will, in accordance with *Griffin,* apply the choice of law rule of Oregon. Oregon follows the rule of *lex loci delictus* (*Nadeau v. Power Plant Engineering Co.,* 216 Ore. 12, 337 P. 2d 313 [1959]; *Williamson v. Weyerhauser Timber Co.,* 221 F. 2d 5 [9th Cir. 1955]; *Bowles v. Barde Steele Company,* 177 Ore. 421, 164 P. 2d 692 [1945]) and would therefore adopt the law of California, inasmuch as California was the place where the accident occurred. As California imposes no limitation on the recovery for wrongful death, none would be imposed by the District Court.

Amici curiae are doubtless more concerned about the case in which they are involved as counsel, where the accident occurred in Medford, Oregon. Although we do not believe it is proper, nor indeed possible, for this Court to attempt to decide all possible issues which might arise in other and different cases, including the case in which amici curiae are involved, it may be noted that the suggestion does not even apply to their case. They note (amici curiae brief, page 10) that in the Medford cases the claimants are from California, Oregon and Washington and the interpleader is now pending in the Federal District Court in Oregon. Under *Griffin,* the District Court would therefore apply Oregon law. But the same result would follow if the actions of the various claimants were filed in their home states of California or Washington, since both follow the *lex loci delictus* rule, under which Oregon law would be applied. (*Gordon v. Reynolds,* 187 Cal. App. 2d 472 [1960]; *Victor v. Sperry,* 163 Cal. App. 2d 518 [1958]; *Loranger v. Nadeau,* 215 Cal. 362, 10 P. 2d 63 [1932]; *Madg v. Voykovich,* 46 Wash. 2d 302, 280 P. 2d 680 [1955]; *Mountain v. Price,* 20 Wash. 2d 129, 146 P. 2d 327 [1944]; *Richardson v. Pac. Power & Light,* 11 Wash. 2d 288, 118 P. 2d 985 [1941].)

Perhaps what amici curiae have in mind, despite the fact that they are representing residents of California, Washington and Oregon only, is that they may be prevented by the interpleader action from seeking a jurisdiction having no connection with the matter at all, which would apply a choice of law rule different

from that applied by either California, Washington, or Oregon. If this is their concern, then their argument amounts to no more than that claimants should be given an unrestricted license to engage in forum shopping, even if it is necessary to utterly destroy the efficacy of the Federal Interpleader Act to accomplish that result.

At pages 12 and 13, amici curiae suggest that allowance of interpleader in this action will deprive the states whose residents were involved in the accident of the right to apply important state policy on the question of liability. As we have noted, so long as all of the states in question apply the rule of *lex loci delictus,* the selection of any particular forum has no bearing whatever upon the question, as all would in this case apply California law, and in the case in which amici curiae are involved, would apply Oregon law. Reliance by amici curiae on *Babcock v. Jackson,* 12 N.Y. 2d 473, 191 N.E. 2d 279 (1963), is misguided. *Babcock* does not stand for the proposition that the forum state will apply its law regarding matters of liability *because* it is the forum state but on the contrary makes clear that the law to be applied is the law of the state which has the most significant "contracts" with the parties and issues. The forum *qua* forum is not generally considered to be a significant contact.[3]

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[3] *Tramontana v. S. A. Empresa De Viacao Aerea Rio Grandense;* 350 F.2d 468, 476 (DCC 1965); Restatement (Second), Conflict of Laws, Section 379.

Gore v. Northeast Airlines, Inc., 222 F.Supp. 50 (S.D. N.Y. 1963) illustrates the point. In *Gore* the Federal District Court of New York, applying the New York "contacts" rule, as enunciated by the New York Court in *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961) and *Pearson v. Northeast Airlines, Inc.*, 309 F. 2d 553 (2 Cir., 1962) Cert. den. 372 U.S. 912, refused to apply New York law in a case arising out of the same tragic accident that was considered in *Kilberg* and *Pearson* because in the action before it the plaintiffs were not residents of New York but rather of Maryland and California. The Court there determined that both California and Maryland, had more intimate "contacts" with the parties and issues than did New York, that each would refer to the law of Massachusetts where the accident occurred, and therefore held that the Massachusetts wrongful death limits would apply. It is obvious, therefore, that if the so-called "contacts" rule were to be applied to questions of liability in cases of this type, forum shopping would be an exercise in futility.

At page 13 of their brief, amici curiae argue that interpleader in Portland, Oregon, will impede or "may" impede the sound policy of encouraging voluntary settlements. The assertions made in this regard are quite revealing. For example, at page 13 of their brief they suggest that if a single trial is held the defendants will present a vigorous defense. Implicit in this suggestion is, we apprehend, the suggestion that if defendants are forced to defend in thirty-five

different actions, it will be economically impossible for them, or at least economically unfeasible for them, to present a determined or adequate defense. There is nothing, of course, in the record here to suggest that defendants should not present a determined defense and indeed any policy which discourages parties in litigation from adequately and forcefully defending their position seems to us to be contrary to every concept of a civilized jurisprudence.

Baldly stated their position is that the defendants in the personal injury cases, including Greyhound, can be coerced into settling the claims being made against them if they can be subjected to thirty-five different trials, and that interpleader will deprive the plaintiffs of such "benefit". If it is a fact that unnecessarily vexatious and harassing litigation, infinitely proliferated, might induce innocent defendants to settle claims being made against them, then courts, including this Honorable Court, should be diligent in exercising whatever powers they might possess to prevent such unfortunate circumstances from arising. The suggestion of amici curiae to the contrary, is, we suggest, hardly deserving of judicial notice or consideration. It might as well be argued that a rule of law which prevented defendants from presenting any evidence in their own behalf in cases of this kind would be a strong inducement for them to settle claims being made against them. Such fact would scarcely commend such rule to any jurisprudence having pretensions to fairness, equality or justice.

the advice that one burn down the house to destroy the mice.

THE INTERPLEADER ACT SHOULD BE BROADLY AND LIBERALLY INTERPRETED AND APPLIED AND SHOULD NOT BE RESTRICTED OR CONFINED BY NARROW OR TECHNICAL LIMITATIONS

Amici curiae suggest that the Interpleader Act should be narrowly confined and restricted in a number of different ways. Thus they contend that it should not be allowed where there is any legitimate doubt as to the sufficiency of the tort-feasor's assets (amici curiae brief, page 18, et seq.), that the remedy should be denied if the claimants waive or deny any claim to the proceeds of the policy (amici curiae brief, page 20, et seq.), and that the injunction should be directed solely to proceedings against the insurer (amici curiae brief, page 21, et seq.).

All of the suggestions in this vein share in common the consistent, if unstated, contention that the Federal Interpleader Act should be narrowly and grudgingly interpreted and applied. But the history of the Act and the cases interpreting it demonstrate that the true rule is quite to the contrary. In *Tallett v. Phoenix Assurance Co.*, 147 F. Supp. 597, 605 (W.D. Ark. 1956) the Court spoke as follows regarding proper approach to the Act:

> ". . . The Federal Interpleader Act, 28 U.S.C.A. § 1335, which is a remedial statute and to be liberally construed, was designed not only to protect stakeholders from double or multiple liability but

also to protect them from the trouble and expense of double or multiple litigation. Sanders v. Armour Fertilizer Works, 292 U.S. 190, 54 S. Ct. 677, 78 L. Ed. 1206; Metropolitan Life Insurance Co. v. Segaritis, D.C. Pa., 20 F. Supp. 739; Massachusetts Mutual Life Insurance Co. v. Weinress, D.C. Ill., 47 F. Supp. 626; and Mallonee v. Fahey, D.C. Cal., 117 F. Supp. 259."[6]

The suggestion that the remedy should not apply in the case of a solvent tortfeasor overlooks troublesome questions of fact and procedure. An insured may have money today and none tomorrow. He may be in a sound financial position, yet have no ready assets subject to attachment. In what manner and at what stage of the proceedings is the question of financial solvency to be determined? Is the Court to impound sufficient assets of the assured to guarantee payment of the claims being asserted against him? Certainly if the Congress had intended that the remedy here be limited in the manner that amici curiae suggest, it would have so provided. It is not for this Court to engraft exceptions in face of the plain statutory command.

This argument also overlooks the convenience and cost saving to the parties, public and courts, discussed earlier, in having a multitude of actions, all arising from a single accident, entirely tried and pre-tried in a single action before a single Court.

The suggestion that the remedy should not apply if the claimants waive their claims against the insur-

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[6]This language was quoted with approval in *Underwriters at Lloyds v. Nichols*, supra, 363 F.2d 357 (8 Cir. 1966).

ance company entirely overlooks the relationship between the insurance company and its assured and would, if followed, utterly deprive the assured of the benefit of his contract.

Take, for example, the case of an insured trucker who has a $100,000.00 policy and is faced with claims in excess of $500,000.00 as the result of an accident involving one of his trucks. Claimant "A" disclaims any interest in the fund, files suit, and obtains a judgment against the trucker for $25,000.00. The insurance company is forbidden by the injunction to pay and the trucker has no cash with which to pay. Claimant "A" thereupon levies execution upon the trucker's truck or trucks, which are seized by the sheriff, rendering it impossible for the trucker to gain a livelihood. In many states, if he were unable to satisfy the judgment, his driver's license and permit to operate would be suspended. All of this despite the fact that he had paid a substantial premium for his insurance coverage, which coverage is sufficient to pay the only judgment actually outstanding against him. In the meanwhile, he would still be subject to numerous other suits in different jurisdictions. If such a course were to be adopted, it is difficult to see how interpleader could ever be instituted by an insurer without exhibiting bad faith toward its insured.

The same result would of course follow from adoption of the suggestion made by amici curiae to the effect that injunctions in such cases should be limited to the protection of the insurance company's fund. The suggestion that the kind of injunction issued by

the Court in *Travelers Indemnity Co. v. Greyhound Lines, Inc., et al.*, supra, 260 F. Supp. 530, Adv. Sh. (W.D. La. 1966), truly serves the interest of claimants, in actions such as this, is, we believe, hardly deserving of serious consideration. On the Pacific Coast the statute of limitations is one year in California (Cal. Code of Civ. Proc. § 340), two years in Oregon (Ore. Rev. Stat. § 12.110) and three years in Washington (Rev. Code Wash. § 4.16.080). In an accident involving citizens of these three states, therefore, such suggested procedure would permit a Washington claimant to subject all claimants to a three year delay before his action was even filed in his state Court. The delay that might thereafter ensue could obviously further delay the resolution of his claim for periods of three, four, five or six additional years. It is hardly to be believed, we suggest, that thirty-five claimants would in fact wish to subject themselves and the ultimate resolution of their claims against the fund on dispute, to such a procedure.

If the district courts are to bobtail their injunctions as amici curiae suggest, a host of problems, some predictable and some unpredictable, will certainly arise. For example, in the instant action, amici curiae have suggested that perhaps Clark and State Farm are entitled to the protection of the injunction but that Greyhound is not because it is financially solvent. However, Clark and Greyhound have been jointly sued in some of the actions filed in California. In California their exists a right of contribution between joint tortfeasons (Cal. Code of Civil Procedure

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Commencing at page 14 of their brief, amici curiae suggest that there are serious doubts about the right of injured parties to have a jury trial if interpleader is allowed. These contentions were fully explored by petitioners in their opening brief, commencing at page 33 to and including page 36 and we shall not further burden the Court upon that subject matter now. However, amici curiae go on to suggest that even though a jury trial may be allowed, such trial, involving some thirty-five claimants, would constitute a "three ring circus", which should be avoided. Amici curiae in this regard, have either overlooked or intentionally seek to ignore the flexibility of practice before the District Court and the wide discretionary powers of the District Judge to make such rules regarding the trial procedure as he may deem necessary to secure an orderly, efficient and just disposition of the matters pending before him.

Rule 42 of the Rules of Civil Procedure permits the District Judge to order separate trials as to any of the plaintiffs, issues or claims as he, in his discretion, may find necessary or useful. In this connection the trial Judge could try separately the claims of claimants from different states if he felt that different rules of law were to be applicable, either upon the issue of liability or damages. He could group for trial together those cases involving roughly similar type injuries if he felt that this would be useful or helpful. Our federal district courts are successfully trying cases involving numerous claimants with cross-claims and counter-claims on a daily basis. There is nothing in

the literature to suggest that our district courts have been so inept in the exercise of the wide powers granted to them under the Rules of Civil Procedure as to permit multi-party litigation to be turned into a "three ring circus".

In fact, the recognition that a multitude of separate trials, in separate jurisdictions, by separate juries, with contradictory and conflicting results of claims all arising out of a single happening, is truly a "three ring circus" has prompted amendment of the Rules of Civil Procedure so that in their present form they permit and encourage consolidation of actions in such circumstances. The contribution to orderly judicial administration accomplished by consolidation of actions arising out of a single accident is particularly great in those cases where a limited fund is available to discharge the conflicting claims of many claimants. Thus, if the claimants in cases of this type are free to litigate their claims in whatever jurisdiction they may please, it is obvious that for roughly identical injuries widely divergent damage awards may ensue.

For example, a California jury might award $500.00 for a broken wrist and a Washington jury $5,000.00 for a substantially identical injury to a person similarly situated merely because of different local feelings of generosity or conservatism on the part of juries. In such instance, the fund is not sufficient to compensate either of the injured parties to the full extent of his verdict, but if they are to share in the fund pro rata, the Washington plaintiff will have received

ten times more for his injury than is to be received by the California plaintiff. Such results are obviously to be avoided if at all possible. The interpleader procedure permits determination of the value of each claim, not only upon its own merits, but also in relationship to the other claims, thus providing for an equitable proration of the fund.

At page 15 of their brief, amici curiae suggest that to allow interpleader will interfere with the right of an injured plaintiff to choose ". . . the forum most convenient to him". In the cases in which the amici curiae are interested, as has been noted, the plaintiffs come from California, Washington and Oregon. It overlooks the fact of modern transportation to argue that plaintiffs are seriously inconvenienced in traveling to any one of the Pacific Coast states in a day when travel between two states by air is often quicker than surface transportation from one point in any particular county to that county's court house.

Furthermore, the suggestion entirely overlooks the power of the Federal District Court under 28 USC Section 1404 to transfer the action for trial to whatever federal district court proves to be the most efficient and advantageous for *all* parties involved, including the advantage to the public. The power of transfer provided to the District Court under Section 1404 is particularly appropriate in cases involving numerous claims arising out of a single accident and this has been frequently observed by district courts in exercising such power. For example, in *Rodgers v. Northwest Airlines, Inc.*, 202 F. Supp. 309 (S.D. N.Y.

1962) a case involving numerous deaths arising out of an airplane disaster, the District Court for the Southern District of New York was asked to transfer three cases from that District to the District Court for the Northern District of Illinois, Eastern Division, sitting in Chicago, where nineteen death actions arising out of the same accident, were then pending. After first noting that "factors of public interest also have a place" in determining questions of transfer, the Court went on to say at page 13 as follows:

> "The benefits and advantages to all parties in having the related actions considered in one jurisdiction under one judge are obvious. Pre-trial proceedings can be conducted more efficiently, duplication of time and effort can be avoided and the benefit to witnesses and to the parties calling them in having them attend only once at one location is plain. Furthermore, to require defendants to relitigate the issue of liability in a number of forums would be vexatious and would not serve the ends of justice. The transfer of this case to the District Court sitting in Chicago is in the interest of sound judicial administration as well as speedier and more efficient disposition of the mass of litigation arising out of this accident. The phrase in § 1404(a) 'in the interest of justice' requires that '[b] both the interest of the parties to the lawsuit as well as society in general should be considered.' *Chicago, Rock Island and Pacific Railroad Co. v. Igoe,* supra, 220 F. 2d 303."

In the instant case, experience indicates that the cost of a venire to try thirty-five separate actions

would exceed the total amount of the insurance coverage provided by the State Farm policy.[4]

The suggestion of amici curiae also entirely ignores substantial benefits that the claimants themselves may obtain by a single trial. If each of the thirty-five claimants is required to prove liability on his own, the cost of doing so must be repeated thirty-five times. In a single trial this cost can be shared by the claimants and thereby extremely substantial savings are possible for them.

ALLOWANCE OF INTERPLEADER RELIEF WOULD NOT PRODUCE ANY CHANGE IN THE PATTERN OF LIABILITY INSURANCE COVERAGE

Amici curiae contend (amici curiae brief, pp. 16-18) that to permit interpleader in this action will encourage business operations to tailor their insurance coverage in such manner as to promote interpleader jurisdiction. It is fanciful, we submit, to speculate that responsible business men will deliberately expose themselves to excess judgments through inadequate coverage upon the remote contingency that an accident might some time occur in which interpleader jurisdiction would afford a remedy to accomplish a

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[4]Assuming that it would take approximately five days to try each of the cases with a jury of twelve jurors at $10.00 per juror per day, each case will cost $600.00 in jury fees alone, or a total of $21,000.00. This of course does not include the cost to the public involved in providing thirty-five different court rooms, judges, bailiffs, clerks, reporters, and other necessary court attaches, nor the cost to the litigants of separately bringing to trial thirty-five different times the necessary witnesses from a number of different states. The total cost in money and human effort is in fact incalculably large.

speedy conclusion to conflicting claims and counterclaims.

Amici curiae in support of their contention point out (amici curiae brief, p. 17, f.n. 11) two interpleader actions in which Greyhound is involved, namely, *Travelers Indemnity Co. v. Greyhound Lines, Inc., et al.*, 260 F. Supp. 530 Adv. Sh. (W.D. La. 1966) and *General Fire and Casualty Co. v. Greyhound Lines, Inc., et al.* (Civil Number 66-205 pending in the United States Court for the District of Oregon).[5] The cases referred to, however, are very far from lending any support to amici curiae's speculation. In the Oregon case the insurance policy in question is in the sum of $500,000.00, and in the Louisiana case the policy provided coverage in the amount of $100,000 to the trucking company whose truck was involved in a collision with a Greyhound bus. We do not believe that it can be seriously contended that one seeking to have a token coverage purchased merely as the touchstone to interpleader jurisdiction would buy a $500,000.00 policy.

In any event, there is no lack of power in the District Court to protect against actual abuse when, as and if the District Court finds that this has occurred. The suggestion that interpleader should be denied in proper cases where the jurisdiction exists and the beneficial purposes of the statute are required upon the speculation that at some future date some unscrupulous business man might somehow improperly seek to invoke the jurisdiction is on a par with

[5]Amici curiae are counsel for various plaintiffs in this action.

§ 875), which right is solely dependent upon the existence of a joint judgment. If the personal injury claimants could proceed against Greyhound alone in California, Greyhound would be entirely deprived of its opportunity and substantive right to procure contribution from Clark and State Farm.

CONCLUSION

We respectfully submit that the order of the District Court in this case insures that all parties to this litigation will be fairly dealt with. To deny interpleader here or to limit the injunction as has been suggested by amici curiae would, on the other hand, guarantee confusion, delay, vexation, needless expense and congestion of court dockets, to the detriment not only of litigants herein, but the public as well.

Dated, San Francisco, California,
March 1, 1967.

Respectfully submitted,
JOHN GORDON GEARIN,
J. D. BURDICK,
Counsel for Petitioner
Greyhound Lines, Inc.

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OPINION

SUPREME COURT OF THE UNITED STATES

No. 391.—October Term, 1966.

State Farm Fire & Casualty Co. et al., Petitioners, v. Kathryn Tashire et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April 10, 1967.]

Mr. Justice Fortas delivered the opinion of the Court.

Early one September morning in 1964, a Greyhound bus proceeding northward through Shasta County, California, collided with a southbound pickup truck. Two of the passengers aboard the bus were killed. Thirty-three others were injured, as were the bus driver, the driver of the truck and its lone passenger. One of the dead and 10 of the injured passengers were Canadians; the rest of the individuals involved were citizens of five American States. The ensuing litigation led to the present case, which raises important questions concerning administration of the interpleader remedy in the federal courts.

The litigation began when four of the injured passengers filed suit in California state courts, seeking damages in excess of $1,000,000. Named as defendants were Greyhound Lines, Inc., a California corporation; Theron Nauta, the bus driver; Ellis Clark, who drove the truck; and Kenneth Glasgow, the passenger in the truck who was apparently its owner as well. Each of the individual defendants was a citizen and resident of Oregon. Before these cases could come to trial and before other suits were filed in California or elsewhere, petitioner, State Farm Fire & Casualty Company, an Illinois corporation, brought this action in the nature of interpleader in the United States District Court for the District of Oregon.

In its complaint State Farm asserted that at the time of the Shasta County collision it had in force an insurance policy with respect to Ellis Clark, driver of the truck, providing for bodily injury liability up to $10,000 per person and $20,000 per occurrence and for legal representation of Clark in actions covered by the policy. It asserted that actions already filed in California and others which it anticipated would be filed far exceeded in aggregate damages sought the amount of its maximum liability under the policy. Accordingly, it paid into court the sum of $20,000 and asked the court (1) to require all claimants to establish their claims against Clark and his insurer in this single proceeding and in no other, and (2) to discharge State Farm from all further obligations under its policy—including its duty to defend Clark in lawsuits arising from the accident. Alternatively, State Farm expressed its conviction that the policy issued to Clark excluded from coverage accidents resulting from his operation of a truck which belonged to another and was being used in the business of another. The complaint, therefore, requested that the court decree that the insurer owed no duty to Clark and was not liable on the policy, and it asked the court to refund the $20,000 deposit.

Joined as defendants were Clark, Glasgow, Nauta, Greyhound Lines, and each of the prospective claimants. Jurisdiction was predicated upon 28 U. S. C. § 1335, the federal interpleader statute,[1] and upon general diversity

[1] 28 U. S. C. § 1335 (a) provides: "The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a . . . policy of insurance . . . of value or amount of $500 or more . . . if

"(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to

of citizenship, there being diversity between two or more of the claimants to the fund and between State Farm and all of the named defendants.

An order issued, requiring each of the defendants to show cause why it should not be restrained from filing or prosecuting "any proceeding in any state or United States Court affecting the property or obligation involved in this interpleader action, and specifically against the plaintiff and the defendant Ellis D. Clark." Personal service was effected on each of the American defendants, and registered mail was employed to reach the 11 Canadian claimants. Defendants Nauta, Greyhound, and several of the injured passengers responded, contending that the policy did cover this accident and advancing various arguments for the position that interpleader was either impermissible or inappropriate in the present circumstances. Greyhound, however, soon switched sides and moved that the court broaden any injunction to include Nauta and Greyhound among those who could not be sued except within the confines of the interpleader proceeding.

When a temporary injunction along the lines sought by State Farm was issued by the United States District Court for the District of Oregon, the present respondents moved to dismiss the action and, in the alternative, for a change of venue—to the Northern District of California, in which district the collision had occurred. After a hearing, the court declined to dissolve the temporary injunction, but continued the motion for a change of venue. The injunction was later broadened to include the protection sought by Greyhound, but modified to

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be entitled to such money or property, or to any one or more of the benefits arising by virtue of any . . . policy . . . ; and if

"(2) the plaintiff has . . . paid . . . the amount due under such obligation into the registry of the court, there to abide the judgment of the court . . . ."

permit the filing—although not the prosecution—of suits. The injunction, therefore, provided that all suits against Clark, State Farm, Greyhound, and Nauta be prosecuted in the interpleader proceeding.

On interlocutory appeal,[2] the Court of Appeals for the Ninth Circuit reversed. 363 F. 2d 7. The court found it unnecessary to reach respondents' contentions relating to service of process and the scope of the injunction, for it concluded that interpleader was not available in the circumstances of this case. It held that in States like Oregon which do not permit "direct action" suits against the insurance company until judgments are obtained against the insured, the insurance company may not invoke federal interpleader until the claims against the insured, the alleged tortfeasor, have been reduced to judgment. Until that is done, said the court, claimants with unliquidated tort claims are not "claimants" within the meaning of § 1335, nor are they "persons having claims against the plaintiff" within the meaning of Rule 22 of the Federal Rules of Civil Procedure.[3] In

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[2] 28 U. S. C. § 1292 (a)(1).

[3] We need not pass upon the Court of Appeals' conclusions with respect to the interpretation of interpleader under Rule 22, which provides that "(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. . . ." First, as we indicate today, this action was properly brought under § 1335. Second, State Farm did not purport to invoke Rule 22. Third, State Farm could not have invoked it in light of venue and service of process limitations. Whereas statutory interpleader may be brought in the district where any claimant resides (28 U. S. C. § 1397), Rule interpleader based upon diversity of citizenship may be brought only in the district where all plaintiffs or all defendants reside (28 U. S. C. § 1391 (a)). And whereas statutory interpleader enables a plaintiff to employ nationwide service of process (28 U. S. C. § 2361), service of process under Rule 22 is confined

accord with that view, it directed dissolution of the temporary injunction and dismissal of the action. Because the Court of Appeals' decision on this point conflicts with those of other federal courts,[4] and concerns a matter of significance to the administration of federal interpleader, we granted certiorari. 385 U. S. 811 (1966). Although we reverse the decision of the Court of Appeals upon the jurisdictional question, we direct a substantial modification of the District Court's injunction for reasons which shall appear.

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to that provided in Rule 4. See generally, 3 Moore, Fed. Prac. ¶ 22.04.

With respect to the Court of Appeals' views on Rule 22, which seem to be shared by our Brother DOUGLAS, compare *Underwriters at Lloyd's* v. *Nichols*, 363 F. 2d 357 (C. A. 8th Cir. 1966), and *A/S Kredit Pank* v. *Chase Manhattan Bank*, 155 F. Supp. 30 (D. C. S. D. N. Y. 1957), aff'd, 303 F. 2d 648 (C. A. 2d Cir. 1962), with *National Cas. Co.* v. *Insurance Co. of North America*, 230 F. Supp. 617 (D. C. N. D. Ohio 1964), and *American Indem. Co.* v. *Hale*, 71 F. Supp. 529 (D. C. W. D. Mo. 1947). See also 3 Moore, Fed. Prac. ¶ 22.04, at 3008 and n. 4.

[4] See, *e. g.*, *Travelers Indem. Co.* v. *Greyhound Lines, Inc.*, 260 F. Supp. 530 (D. C. W. D. La. 1966); *Commercial Union Ins. Co. of New York* v. *Adams*, 231 F. Supp. 860 (D. C. S. D. Ind. 1964); *Pan American Fire & Cas. Co.* v. *Revere*, 188 F. Supp. 474 (D. C. E. D. La. 1960); *Onyx Ref. Co.* v. *Evans Prod. Corp.*, 182 F. Supp. 253 (D. C. N. D. Tex. 1959). Although *Travelers* and *Revere* were brought in Louisiana, a State which authorizes "direct action" suits against insurance companies, the statute was not relied upon in *Travelers* (see 260 F. Supp., at 533, n. 3), and furnished only an alternative ground in *Revere* (see 188 F. Supp., at 482–483).

The only post-1948 case relied upon by the Court of Appeals and respondents, *National Cas. Co.* v. *Insurance Co. of North America*, 230 F. Supp. 617 (D. C. N. D. Ohio 1964), turns out to be of little assistance with respect to statutory interpleader since that court denied statutory interpleader solely on the ground that all claimants were citizens of Ohio and hence lacked the required diversity of citizenship. *Id.*, at 619.

I.

Before considering the issues presented by the petition for certiorari, we find it necessary to dispose of a question neither raised by the parties nor passed upon by the courts below. Since the matter concerns our jurisdiction, we raise it on our own motion. *Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 70 (1939). The interpleader statute, 28 U. S. C. § 1335, applies where there are "Two or more adverse claimants, of diverse citizenship . . . ." This provision has been uniformly construed to require only "minimal diversity," that is, diversity of citizenship between two or more claimants, without regard to the circumstance that other rival claimants may be co-citizens.[5] The language of the statute, the legislative purpose broadly to remedy the problems posed by multiple claimants to a single fund, and the consistent judicial interpretation tacitly accepted by Congress, persuade us that the statute requires no more. There remains, however, the question whether such a statutory construction is consistent with Article III of our Constitution, which extends the federal judicial power to "Controversies . . . between Citizens of different States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." In *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806), this Court held that the diversity of citizenship statute required "complete diversity": where co-citizens appeared on both sides of a dispute, jurisdiction was lost. But Chief Justice Marshall there purported to construe only "The words of the act of

[5] See, *e. g.*, *Haynes* v. *Felder*, 239 F. 2d 868, 872–875 (C. A. 5th Cir. 1957); *Holcomb* v. *Aetna Life Ins. Co.*, 255 F. 2d 577, 582 (C. A. 10th Cir.), cert. denied, 358 U. S. 879 (1958); *Cramer* v. *Phoenix Mut. Life Ins. Co.*, 91 F. 2d 141, 146–147 (C. A. 8th Cir.), cert. denied, 302 U. S. 739 (1937); *Commercial Union Ins. Co. of New York* v. *Adams*, 231 F. Supp. 860, 863 (D. C. S. D. Ind. 1964); 3 Moore, Fed. Prac. ¶ 22.09, at 3033.

Congress," not the Constitution itself.[6] And in a variety of contexts this Court and the lower courts have concluded that Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens.[7] Accordingly, we conclude that the present case is properly in the federal courts.

II.

We do not agree with the Court of Appeals that, in the absence of a state law or contractual provision for "direct action" suits against the insurance company, the company must wait until persons asserting claims against its insured have reduced those claims to judgment before seeking to invoke the benefits of federal interpleader.

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[6] Subsequent decisions of this Court indicate that *Strawbridge* is not to be given an expansive reading. See, *e. g.*, *Louisville Railroad Co.* v. *Letson*, 2 How. 497, 544–556 (1844), expressing the view that in 1839 Congress had in fact acted to "rid the courts of the decision in the case of Strawbridge and Curtis."

[7] See, *e. g.*, *American Fire & Cas. Co.* v. *Finn*, 341 U. S. 6, 10, n. 3 (1951), and *Barney* v. *Latham*, 103 U. S. 205, 213 (1881), construing the removal statute, now 28 U. S. C. § 1441 (c); *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U. S. 356 (1921), concerning class actions; *Wichita R. R. & Light Co.* v. *Public Util. Comm.*, 260 U. S. 48 (1922), dealing with intervention by co-citizens. Full-dress arguments for the constitutionality of "minimal diversity" in situations like interpleader, which arguments need not be rehearsed here, are set out in Judge Tuttle's opinion in *Haynes* v. *Felder*, 239 F. 2d, at 875–876; in Judge Weinfeld's opinion in *Twentieth Century-Fox Film Corp.* v. *Taylor*, 239 F. Supp. 913, 918–921 (D. C. S. D. N. Y. 1965); and in ALI, Study of the Division of Jurisdiction Between State and Federal Courts, 176–186 (Tent. Draft No. 2, 1964); 3 Moore, Fed. Prac. ¶ 22.09, at 3033–3037; Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. J. 377, 393–406 (1940); Chafee, Interpleader in the United States Courts, 41 Yale L. J. 1134, 1165–1169 (1932). We note that the American Law Institute's proposals for revision of the Judicial Code to deal with the problem of multiparty, multijurisdiction litigation are predicated upon the permissibility of "minimal diversity" as a jurisdictional basis.

That may have been a tenable position under the 1926 [8] and 1936 interpleader statutes.[9] These statutes did not carry forward the language in the 1917 Act authorizing interpleader where adverse claimants "may claim" benefits as well as where they "are claiming" them.[10] In 1948, however, in the revision of the Judicial Code, the "may claim" language was restored.[11] Until the decision below, every court confronted by the question has concluded that the 1948 revision removed whatever requirement there might previously have been that the insurance company wait until at least two claimants reduced their claims to judgments.[12] The commentators are in accord.[13]

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[8] 44 Stat. 416 (1926), which added casualty companies to the enumerated categories of plaintiffs able to bring interpleader, and provided for the enjoining of proceedings in other courts.

[9] 49 Stat. 1096 (1936), which authorized "bills in the nature of interpleader," meaning those in which the plaintiff is not wholly disinterested with respect to the fund he has deposited in court. See Chafee, The Federal Interpleader Act of 1936: I, 45 Yale L. J. 963 (1936).

[10] 39 Stat. 929 (1917). See *Klaber* v. *Maryland Cas. Co.*, 69 F. 2d 934, 938–939 (C. A. 8th Cir. 1934), which held that the omission in the 1926 Act of the earlier statute's "may claim" language required the denial of interpleader in the face of unliquidated claims (alternative holding).

[11] Although the Reviser's Note did not refer to the statutory change or its purpose, we have it on good authority that it was the omission in the Note rather than the statutory change which was inadvertent. See 3 Moore, Fed. Prac. ¶ 22.08, at 3025–3026, n. 13. And it was widely assumed that restoration of the "may claim" language would have the effect of overruling the holding in *Klaber*, *supra*, that one may not invoke interpleader to protect against unliquidated claims. See, *e. g.*, Chafee, 45 Yale L. J., at 1163–1167; Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. J. 377, 418–420 (1940). In circumstances like these, the 1948 revision of the Judicial Code worked substantive changes. *Ex parte Collett*, 337 U. S. 55 (1949).

[12] See cases listed at n. 4.

[13] 3 Moore, Fed. Prac. ¶ 22.08, at 3024–3025; Keeton, Preferential Settlement of Liability-Insurance Claims, 70 Harv. L. Rev. 27, 41–42 (1956).

Considerations of judicial administration demonstrate the soundness of this view which, in any event, seems compelled by the language of the present statute, which is remedial and to be liberally construed. Were an insurance company required to await reduction of claims to judgment, the first claimant to obtain such a judgment or to negotiate a settlement might appropriate all or a disproportionate slice of the fund before his fellow claimants were able to establish their claims. The difficulties such a race to judgment pose for the insurer,[14] and the unfairness which may result to some claimants, were among the principal evils the interpleader device was intended to remedy.[15]

III.

The fact that State Farm had properly invoked the interpleader jurisdiction under § 1335 did not, however, entitle it to an order both enjoining prosecution of suits against it outside the confines of the interpleader proceeding and also extending such protection to its insured, the alleged tortfeasor. Still less was Greyhound Lines entitled to have that order expanded so as to protect itself and its driver, also alleged to be tortfeasors, from suits brought by its passengers in various state or federal courts. Here, the scope of the litigation, in terms of parties and claims, was vastly more extensive than the confines of the "fund," the deposited proceeds of the insurance policy. In these circumstances, the mere existence of such a fund cannot, by use of interpleader, be

[14] See Keeton, *op. cit. supra*, n. 10.

[15] The insurance problem envisioned at the time was that of an insurer faced with conflicting but mutually exclusive claims to a policy, rather than an insurer confronted with the problem of allocating a fund among various claimants whose independent claims may exceed the amount of the fund. S. Rep. No. 558, 74th Cong., 1st Sess., 2–3, 7, 8 (1935); Chafee, Modernising Interpleader, 30 Yale L. J. 814, 818–819 (1921).

employed to accomplish purposes that exceed the needs of orderly contest with respect to the fund.

There are situations, of a type not present here, where the effect of interpleader is to confine the total litigation to a single forum and proceeding. One such case is where a stakeholder, faced with rival claims to the fund itself, acknowledges—or denies—his liability to one or the other of the claimants.[16] In this situation, the fund itself is the target of the claimants. It marks the outer limits of the controversy. It is, therefore, reasonable and sensible that interpleader, in discharge of its office to protect the fund, should also protect the stakeholder from vexatious and multiple litigation. In this context, the suits sought to be enjoined are squarely within the language of 28 U. S. C. § 2361, which provides in part:

> "In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting *any proceeding* in any State or United States court *affecting the property, instrument or obligation involved in the interpleader action* . . . ."

But the present case is another matter. Here, an accident has happened. Thirty-five passengers or their representatives have claims which they wish to press against a variety of defendants: the bus company, its driver, the owner of the truck, and the truck driver. The circumstance that one of the prospective defendants happens to have an insurance policy is a fortuitous event which should not of itself shape the nature of the ensuing litigation. For example, a resident of California, injured in California aboard a bus owned by a California corporation should not be forced to sue that corporation

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[16] This was the classic situation envisioned by the sponsors of interpleader. See n. 15, *supra*.

anywhere but in California simply because another prospective defendant carried an insurance policy. And an insurance company whose maximum interest in the case cannot exceed $20,000 and who in fact asserts that in has no interest at all, should not be allowed to determine that dozens of tort plaintiffs must be compelled to press their claims—even those claims which are not against the insured and which in no event could be satisfied out of the meager insurance fund—in a single forum of the insurance company's choosing. There is nothing in the statutory scheme, and very little in the judicial and academic commentary upon that scheme, which requires that the tail be allowed to wag the dog in this fashion.

State Farm's interest in this case, which is the fulcrum of the interpleader procedure, is confined to its $20,000 fund. That interest receives full vindication when the court restrains claimants from seeking to enforce against the insurance company any judgment obtained against its insured, except in the interpleader proceeding itself. To the extent that the District Court sought to control claimants' lawsuits against the insured and other alleged tortfeasors, it exceeded the powers granted to it by the statutory scheme.

We recognize, of course, that our view of interpleader means that it cannot be used to solve all the vexing problems of multiparty litigation arising out of a mass tort. But interpleader was never intended to perform such a function, to be an all-purpose "bill of peace."[17] Had

[17] There is not a word in the legislative history suggesting such a purpose. See S. Rep. No. 558, 74th Cong., 1st Sess. (1935). And Professor Chafee, upon whose work the Congress heavily depended, has written that little thought was given to the scope of the "second stage" of interpleader, to just what would be adjudicated by the interpleader court. See Chafee, Broadening the Second Stage of Federal Interpleader, 56 Harv. L. Rev. 929, 944–945 (1943). We note that in Professor Chafee's own study of the bill of peace as a device for dealing with the problem of multiparty litigation,

it been so intended, careful provision would necessarily have been made to insure that a party with little or no interest in the outcome of a complex controversy should not strip truly interested parties of substantial rights—such as the right to choose the forum in which to establish their claims, subject to generally applicable rules of jurisdiction, venue, service of process, removal, and change of venue. None of the legislative and academic sponsors of a modern federal interpleader device viewed their accomplishment as a "bill of peace," capable of sweeping dozens of lawsuits out of the various state and federal courts in which they were brought and into a single interpleader proceeding. And only in two reported instances has a federal interpleader court sought to control the underlying litigation against alleged tortfeasors as opposed to the allocation of a fund among successful tort plaintiffs. See *Commercial Union Ins. Co. of New York* v. *Adams*, 231 F. Supp. 860 (D. C. S. D. Ind. 1964) (where there was virtually no objection and where all of the basic tort suits would in any event have been prosecuted in the forum state), and *Pan American Fire & Cas. Co.* v. *Revere*, 188 F. Supp. 474 (D. C. E. D. La. 1960). Another district court, on the other hand, has recently held that it lacked statutory authority to enjoin suits against the alleged tortfeasor as opposed to proceedings against the fund itself. *Travelers Indem. Co.* v. *Greyhound Lines, Inc.*, 260 F. Supp. 530 (D. C. W. D. La. 1966).

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he fails even to mention interpleader. See Chafee, Some Problems of Equity 149–198 (1950). In his writing on interpleader, Chafee assumed that the interpleader court would allocate the fund "among all the claimants who get judgment within a reasonable time . . . ." Chafee, The Federal Interpleader Act of 1936: II, 45 Yale L. J. 1161, 1165–1166 (1936). See also Chafee, 49 Yale L. J., at 420–421.

In light of the evidence that federal interpleader was not intended to serve the function of a "bill of peace" in the context of multiparty litigation arising out of a mass tort, of the anomalous power which such a construction of the statute would give the stakeholder, and of the thrust of the statute and the purpose it was intended to serve, we hold that the interpleader statute did not authorize the injunction entered in the present case. Upon remand, the injunction is to be modified consistently with this opinion.[18]

IV.

The judgment of the Court of Appeals is reversed, and the case is remanded to the United States District Court for proceedings consistent with this opinion.

It is so ordered.

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[18] We find it unnecessary to pass upon respondents' contention, raised in the courts below but not passed upon by the Court of Appeals, that interpleader should have been dismissed on the ground that the 11 Canadian claimants are "indispensable parties" who have not been properly served. The argument is that 28 U. S. C. § 2361 provides the exclusive mode of effecting service of process in statutory interpleader, and that § 2361—which authorizes a district court to "issue its process for all claimants" but subsequently refers to service of "such process" by marshals "for the respective districts where the claimants reside or may be found"—does not permit service of process beyond the Nation's borders. Since our decision will require basic reconsideration of the litigation by the parties as well as the lower courts, there appears neither need nor necessity to determine this question at this time. We intimate no view as to the exclusivity of § 2361, whether it authorizes service of process in foreign lands, whether in light of the limitations we have imposed on the interpleader court's injunctive powers the Canadian claimants are in fact "indispensable parties" to the interpleader proceeding itself, or whether they render themselves amenable to service of process under § 2361 when they come into an American jurisdiction to establish their rights with respect either to the alleged tortfeasors or to the insurance fund. See 2 Moore, Fed. Prac. ¶ 4.20, at 1091–1105.

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SUPREME COURT OF THE UNITED STATES

No. 391.—October Term, 1966.

State Farm Fire & Casualty Co. et al., Petitioners, *v.* Kathryn Tashire et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April 10, 1967.]

Mr. Justice Douglas, dissenting in part.

While I agree with the Court's view as to "minimal diversity" and that the injunction, if granted, should run only against prosecution of suits against the insurer, I feel that the use which we today allow to be made of the federal interpleader statute,[1] 28 U. S. C. § 1335, is, with all deference, unwarranted. How these litigants are "claimants" to this fund in the statutory sense is indeed a mystery. If they are not "claimants" of the fund,[2] neither are they in the category of those who "are claiming" or who "may claim" to be entitled to it.

[1] "(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more . . . if

"(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property . . . into the registry of the court, there to abide the judgment of the court . . . ."

[2] Under the policy issued by petitioner, it promises "[t]o pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons . . . caused by accident arising out of the ownership, maintenance or use, including loading or unloading, of the owned automobile. . . ." The insured will "become legally

This insurance company's policy provides that it will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay." To date the insured has not become "legally obligated" to pay any sum to any litigant. Since nothing is owed under the policy, I fail to see how any litigant can be a "claimant" as against the insurance company. If that is doubtful the doubt is resolved by two other conditions:

(1) The policy states "no action shall lie against the company . . . until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company."

(2) Under California law where the accident happened and under Oregon law where the insurance contract was made, a direct action against the insurer is not allowable until after a litigant receives a final judgment against the insured.[3]

Thus under this insurance policy as enforced in California and in Oregon a "claimant" against the insured can become a "claimant" against the insurer only after final judgment against the insured or after a consensual written agreement of the insurer, a litigant, and the insurer. Neither of those two events has so far happened.[4]

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obligated to pay" only if he has been found to be at fault for the accident, or if the victim's claim has been settled in accord with the policy terms. The claim against the insurance company is thus contingent on a finding that the insured was at fault or a settlement. This is unlike the situation where the insurance company has issued a policy such as a workmens compensation policy which insures the insured for liability imposed in the absence of fault.

[3] See Calif. Ins. Code § 11580 (2); Ore. Rev. Stat. § 23.230.

[4] In those States having a direct action statute, allowing an action against the insurer prior to judgment against the insured, interpleader jurisdiction can be sustained absent a judgment against the insured. The direct action statute gives the injured party the status of a "claimant" against the insurer. See, *e. g., Pan American Fire & Cas. Co.* v. *Revere,* 188 F. Supp. 474, 482-483.

This construction of the word "claimants" against the fund is borne out, as the Court of Appeals noted, by Rule 22 (1) of the Federal Rules of Civil Procedure.[5] That Rule, also based on diversity of citizenship, differs only in the district where the suit may be brought and in the reach of service of process, as the Court points out.[6] But it illuminates the nature of federal interpleader for it provides that only "persons having claims against the plaintiff (insurer) may be joined as defendants and required to interplead."

Can it be that we have two kinds of interpleader statutes as between which an insurance company can choose: one that permits "claimants" against the insurer ("persons having claims against the plaintiff") to be joined and the other that permits "claimants" against the insured to be joined for the benefit of the insurer even though they may never be "claimants" against the insurer? I cannot believe that Congress launched such an irrational scheme.

The Court rests heavily on the fact that the 1948 Act contains the phrase "may claim," while the 1926 and 1936 interpleader statutes contained the phrase "are claiming." From this change in language the Court infers that Congress intended to allow an insurance company to interplead even though a judgment has not been entered against the insured and there is no direct action statute. This inference is drawn despite the fact that the Reviser's Note contains no reference to the change in wording or its purpose; the omission is dismissed as "inadvertent." But it strains credulity to suggest

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[5] Rule 22 (1) provides in part:

"Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability."

[6] See note 3 of the Court's opinion.

that mention would not have been made of such a drastic change, if in fact Congress intended to make it. And, despite the change in wording, under the 1948 Act, there must be "adverse claimants . . . [who] are claiming or may claim to be entitled to such money . . . , or to any one or more of the benefits arising by virtue of any . . . policy . . . ." Absent a direct action statute, the victims are not "claimants" against the insurer until their claims against the insured have been reduced to judgment. Understandably, the insurance company wants the best of two worlds. It does not want an action against it until judgment against its insured. But, at the same time, it wants the benefits of an interpleader statute. Congress could of course confer such a benefit. But it is not for this Court to grant dispensations from the effects of the statutory scheme which Congress has erected.

I would construe its words in the normal sense and affirm the Court of Appeals.